

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 170 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

V P C RAO

Versus

HARSHADBHAI BHAILALBHAI PATEL

Appearance:

MR MR GEHANI for Petitioner

MR AG URAIZEE, APP with Mr.MR Anand, PP for Respondent No.4 - State

Mr JAYANT PANCHAL, Advocate as an amicus curiae for Respondents No.1 to 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 18/07/96

ORAL JUDGEMENT

Leave to amend.

Rule. Service of Rule waived by Mr.A.G.Uraizee, learned A.P.P. with Mr. M.R.Anand, learned P.P. on behalf of Respondent No.4 - State. The respondents

No.1,2 & 3 are served. Respondents No.2 & 3 are present. They do not want to engage any advocate. They do not want to take any assistance from legal Aid. However, this Court requested Mr.Jayant Panchal, learned Advocate to assist the Court. This matter is finally disposed of by this Judgment after hearing the learned Counsel appearing for the petitioner, learned A.P.P. for the State and Mr.Jayant Panchal, learned Advocate as an amicus curiae.

2. At the outset it may be noted that it is not in dispute that accused persons do not claim the return of the Muddamal Mandrex tablets and methaqualone powder. It is also not in dispute that there is a notification under which these muddamal mandrex tablets and methaqualone powder are required to be destroyed. On 8th November 1995 the prosecuting Agency filed application Ex.4 before the learned Special Judge in NDPS Special Case No.15/95 praying for passing necessary orders for disposal of muddamal before the trial by virtue of the aforesaid notification read with Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the N.D.P.S.Act"). The learned Special Judge, by his impugned order dated 16.2.1996 dismissed the application on the ground that the prosecuting Agency did not follow the requirement of Section 52-A(2) of the N.D.P.S. Act and, therefore, he although could have entertained such an application had the required procedure been followed, could not do so. He, therefore, dismissed the application by observing as under :

"If the procedure prescribed by law is not complied with, non compliance may affect fair trial. Therefore, in this case, the procedure as prescribed u/s.52-A of NDPS Act having been not complied with, the application does not require to be allowed."

3. The short grievance made on behalf of the Prosecuting Agency, being applicant herein, is that the Prosecuting Agency did not want to destroy the muddamal articles without following the procedure in Section 52-A(2) of the N.D.P.S. Act. What they sought was to seek permission to follow that procedure for destruction of muddamal articles. Section 52-A(2) reads as under :

"(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, the

officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of -

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or
- (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn."

On a plain reading of the aforesaid provision it clearly appears that where there is notification with regard to particular drugs or particular narcotic drugs or psychotropic substance require expeditious destruction thereof in public interest. Such destruction can be made by following the procedure prescribed in the aforesaid provision. The learned Special Judge ought to have concentrated on seeing that the Prosecuting Agency followed the procedure by making appropriate application or by himself issuing appropriate directions since the public interest would obviously require destruction of such articles mentioned in the notification at the earliest point of time. However, on going through the prayer made before the learned Special Judge it does appear that the prosecuting Agency failed to point out therein that the prosecution Agency wanted to follow the procedure under Section 52-A(2) of the N.D.P.S. Act. In that view of the matter no fault can be found with the impugned order of the learned Special Judge. At the same time, since the appropriate request has been made in this proceeding for following the procedure u/s.52-A(2) quoted hereinabove there is no reason why the same being not granted.

4. Following order is, therefore, passed :

The applicant (Prosecuting Agency) is hereby permitted to follow the procedure prescribed under Section 52-A(2) of the N.D.P.S. Act for the purpose of destruction of muddamal articles in question and as and when such application is moved before the learned Special Judge/learned Magistrate, appropriate order shall be passed by the concerned learned Magistrate/learned Special Judge for destruction of the Muddamal Articles.

Rule is made absolute in the aforesaid terms.

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